

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

Civil No.

STEVEN W. MCCANN, d/b/a SWMc
Services,)

Defendant.)

08-5097

SECT.R MAG 1

COMPLAINT

Plaintiff United States of America, alleges the following against defendant Steven W.

McCann:

Jurisdiction and Venue

1. This Court has jurisdiction under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402, 7407 and 7408. This suit is brought under 26 U.S.C. §§ 7402, 7407 and 7408 to enjoin Steven W. McCann, d/b/a SWMc Services ("defendant") from preparing federal income tax returns based on the improper "mariner's tax deduction," and upon other unrealistic positions described below.
2. This action has been requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General under 26 U.S.C. §§ 7402, 7407 and 7408.

Steven McCann

3. McCann is a Certified Public Accountant (CPA) who lives and works in the Houma, Louisiana area, within this judicial district.

4. McCann prepares federal income tax returns for others, and holds himself out as a financial expert. He does business under the name SWMc Services, which is located at 428 Idlewild, Houma, Louisiana, 70364.

The Mariner's Tax Deduction

5. The mariner's tax deduction is an improper tax deduction taken for meals and incidental expenses by seamen who already receive free meals from their employers. In short, it is a deduction for expenses never paid.
6. Federal courts in this district have enjoined other return preparers for claiming the same bogus mariner's deduction for their customers. *United States v. Rodney G. Bourg, et al.*, (E.D. La., Oct. 5, 2006), <http://www.usdoj.gov/tax/txdv06682.htm>; *United States v. Terry P. Dockery, et al.*, (E.D. La., Feb. 9, 2005), <http://www.usdoj.gov/tax/txdv05053.htm>; and *United States v. Douglas P. Boudreaux, et al.*, (E.D. La., Aug. 24, 2004), <http://www.usdoj.gov/tax/txdv04574.htm>. On August 20, 2007, a United States District Court enjoined the main proponent of the mariner's deduction, Martin Kapp. The court determined that the mariner's deduction was illegal, reasoning that "employees cannot claim a traveling expense deduction for meal costs that they did not incur." *United States v. Martin A. Kapp* (C.D. Cal., Aug. 20, 2007), <http://www.usdoj.gov/tax/txdv07641.htm>.
7. It is settled that the mariner's tax deduction is improper. On September 15, 2000, the United States Tax Court issued two decisions regarding the mariners deduction; *Westling v. Commissioner*, 80 T.C.M. (CCH) 873, 200 WL 13110659 (2000), and *Johnson v. Commissioner*, 115 T.C. 210, 2000 WL 1310661 (2000). In both cases, the court held that merchant seamen were not permitted to deduct the cost of meals that their employers

had given them for free. However, these cases have not deterred McCann from claiming the same improper deductions for his customers.

McCann's Use of the Mariner's Tax Deduction

8. Between 2000 and 2007, McCann prepared at least 985 federal income tax returns for customers claiming the bogus "mariner's tax deduction," or a modified version of it. On information and belief, the taxpayers on whose returns the deduction was claimed were employed as merchant seamen ("mariners").
9. On information and belief, and in accordance with usual and customary practices of the industry, the employers furnished the mariners with meals and other incidentals without charge.
10. McCann claims the deduction for his customers on IRS Schedule A and Form 2106, or the Business Expense Deductions form.
11. From 2000 through 2004, McCann prepared 585 returns claiming the mariner's tax deduction. To calculate the amount of the deduction, McCann multiplied the daily per diem rate for the location in which the customer's ship was located by the number of days the seaman was in that location.
12. The IRS audited 14 of these returns and confirmed that McCann had claimed the mariner's deduction on all 14. In early 2005, an IRS Revenue Agent informed McCann that the mariner's tax deduction was improper. McCann agreed that the deduction was improper, and agreed to stop claiming it on his customers' tax returns. McCann represented some of his clients when the IRS examined their returns; he even told his

clients that the deduction was improper and encouraged them to agree to the tax deficiencies that the IRS proposed as a result of the examinations.

McCann's Modified Mariner's Tax Deduction

13. In 2005, to avoid detection by the IRS, McCann began using a modified version of the mariner's tax deduction. Specifically, McCann prepared returns for customers claiming improper per diem incidental expenses for a percentage of the allowable daily per diem amount.
14. McCann claimed a deduction equal to 10% of the customer's daily per diem. These deductions, which ranged from \$5-\$23, are improper because such deductions are capped at \$3 per day. Rev. Pro. 2007-63. The \$3 limit has existed since 2003. Rev. Proc. 2003-80.
15. On March 14, 2007, during an interview with the IRS, McCann admitted to an IRS revenue agent that he had prepared returns claiming the mariner's tax deduction. He admitted that his mariner's deduction was improper and he agreed to stop claiming it on his customers' tax returns.
16. On July 18, 2007, the revenue agent gave McCann a copy of the permanent injunction barring Rodney and Cindy Bourg from preparing tax returns for claiming the same improper mariner's tax deduction. The revenue agent also gave McCann copies of press releases issued by the U.S. Department of Justice describing other permanent injunctions barring return preparers from claiming the same improper mariner's tax deduction for customers. At the July 18 meeting, McCann signed a form acknowledging that he

received these documents, and agreed to refrain from claiming the mariner's deduction for his customers. But McCann continued taking the modified mariner's deduction.

17. On October 26, 2007, McCann told the revenue agent that his modified mariner's tax deduction was proper.
18. The IRS estimates that McCann caused approximately \$1,300,000 in harm to the Government by claiming improper mariner deductions between 2000 and 2007.
19. This estimate is based on a sampling of audited returns that McCann prepared; the IRS multiplied the average tax loss per audited return by the total number of returns prepared by McCann during the time period.
20. As a federal income tax return preparer, McCann knew or should have known that under I.R.C. § 162(a), employee business expenses are only deductible if "paid or incurred" by the employee. Meals already furnished by an employer are not an expense for the taxpayer.
21. McCann has prepared, or assisted in preparing, tax returns and refund claims that McCann knows, or should have known, understate customers' tax liability and that McCann knows, or should have known, are frivolous or false.
22. The understatements of tax liability reflected on such returns prepared by McCann are due, at least in material part, to the assertion of a position for which there is no realistic possibility of being sustained.
23. By preparing the improper mariner's tax deduction and the modified mariner's tax deduction described above, McCann interferes with the proper administration and enforcement of the internal revenue laws.

24. McCann's actions outlined above have caused the IRS to devote resources to detecting and correcting a substantial volume of false and fraudulent returns prepared by McCann.

Count I

Injunction under I.R.C. § 7407

25. The United States incorporates herein by reference the allegations in paragraphs 1 through 24.
26. Section 7407 of the Internal Revenue Code permits a court to enjoin the conduct of an individual if it finds that the individual has engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695.
27. Section 6694 of the Internal Revenue Code imposes penalties on income tax return preparers who prepare returns that contain unreasonable positions, or who willfully understate the tax liability of another person.
28. McCann, an income tax return preparer, has engaged in conduct subject to penalties under I.R.C. § 6694 because he knew, or should have known, that the "mariner's tax deduction" and the modified mariner's deduction are frivolous positions with no realistic possibility of being sustained on the merits, and because he willfully attempted to understate his customers' tax liabilities, or prepared their returns in a reckless manner or with an intentional disregard for rules and regulations.
29. Section 7407 also authorizes a court to enjoin an income tax return preparer from engaging in further misconduct if the court finds (I) that the return preparer has engaged in any fraudulent or deceptive conduct that substantially interferes with the proper

administration of the internal revenue laws, and (ii) that injunctive relief is appropriate to prevent recurrence of such conduct.

30. McCann engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws by knowingly and willfully filing false returns that contained the improper mariner's tax deductions and modified mariner's tax deductions.
31. Due to the gravity of harm caused by McCann, the large number of returns he prepared claiming the improper deductions detailed above, his continued operation of a CPA practice preparing federal income tax returns for customers, and his continued claiming of the deductions after acknowledging that the deductions were improper, it is unlikely that McCann will alter his behavior without an injunction. Injunctive relief under I.R.C. § 7407 is not only appropriate, it is necessary.

Count II

Injunction under I.R.C. §7408 for violations of I.R.C. § 6701

32. The United States incorporates herein by reference the allegations in paragraphs 1 through 31.
33. Section 7408 of the Internal Revenue Code permits a court to enjoin a person from engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.
34. Section 6701 of the Internal Revenue Code imposes a penalty on any person who (i) aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (ii) who knows (or has reason to

believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (iii) who knows that such portion (if so used) would result in an understatement of the liability for the tax of another person.

35. McCann has engaged in conduct subject to penalty under I.R.C. § 6701 of the Internal Revenue Code by preparing returns claiming the improper mariner's tax deductions described above. McCann knew or had reason to believe that the documents would be used in connection with material matters arising under the internal revenue laws. McCann also knew that the returns he prepared claiming the improper deductions would cause understatements of tax liabilities.
36. Injunctive relief is appropriate to prevent the recurrence of McCann's conduct and thus authorized under I.R.C. § 7408.

Count III

Unlawful Interference with the Enforcement of the Internal Revenue Laws, I.R.C. § 7402

37. The United States incorporates herein by reference the allegations and averments made in paragraphs 1 through 36.
38. Section 7402(a) of the Internal Revenue Code broadly authorizes federal district courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws.
39. McCann, through the conduct described above, engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws. McCann's conduct causes irreparable injury to the United States, and injunction under I.R.C. § 7402(a) is necessary and appropriate.

WHEREFORE, the United States respectfully requests the following relief:

A. That the Court find that McCann has engaged in conduct subject to penalty under I.R.C. § 6694, and that injunctive relief is therefore appropriate under I.R.C. § 7407 to prevent recurrence of that conduct;

B. That the Court find that McCann has engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief is therefore appropriate under I.R.C. § 7407 to prevent recurrence of that conduct;

C. That the Court find that McCann has engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is therefore appropriate under I.R.C. § 7408 to prevent recurrence of that conduct;

D. That the Court find that McCann has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct, pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408 enter a permanent injunction prohibiting McCann, individually, and anyone in active concert or participation with him, including any agent, servant, or employee, from directly or indirectly:

- (1) engaging in any conduct subject to penalty under I.R.C. § 6694, including but not limited to preparing any part of a return, amended return, or claim for refund that includes an unrealistic position, including, without limitation, inflated claims for the deduction of business or employee expenses;

- (2) assisting or aiding others to evade the payment of taxes or to prepare false or fraudulent federal income tax returns;
- (3) engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws; and
- (4) engaging in conduct subject to penalty under I.R.C. § 6701, i.e, preparing or assisting others in preparing any document (i) that is to be used in connection with any material matter arising under the internal revenue laws and (ii) that McCann knows will (if so used) result in understating the income tax liability of another person.

G. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring McCann, at his own expense, within twenty-one days of entry of the injunction, to mail a copy of the injunction in this matter to all persons for whom he prepared or assisted in preparing any federal income tax return, amended return, or refund claim since January 1, 2000 through the present;

H. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring McCann to file with the Clerk of this Court, within twenty-two days after entry of the Court's order or judgment of injunction, a sworn certificate of compliance, signed under penalty of perjury, stating that he has complied with the foregoing directives;

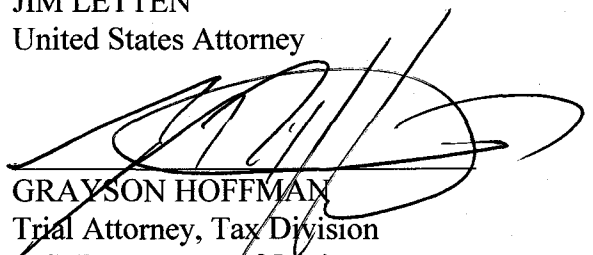
I. That this Court order that the United States may engage in post-judgment discovery to ensure compliance with the permanent injunction;

J. That this Court retain jurisdiction over this action for the purpose of implementing and enforcing the final judgment and all additional decrees and orders necessary and appropriate to the public interest; and

K. That this Court grant the United States such other and further relief, including its costs, as is just and equitable.

Respectfully submitted,

JIM LETTEN
United States Attorney



GRAYSON HOFFMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-2904
Facsimile: (202) 514-6770
E-mail: Grayson.A.Hoffman@usdoj.gov